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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/696,258

10/28/2003

Rebecca Gomez

REB/001 DIV

7051

1473 7590 12/13/2007

ROPES & GRAY LLP  
PATENT DOCKETING 39/361  
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EXAMINER

SMITH, JORDAN J

ART UNIT

PAPER NUMBER

4153

MAIL DATE

DELIVERY MODE

12/13/2007

PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b> 10/696,258	<b>Applicant(s)</b> GOMEZ, REBECCA	
	<b>Examiner</b> Jordan Smith	<b>Art Unit</b> 4153	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 13 April 2005.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 13-21 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 13-21 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 28 October 2003 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)            | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)   | Paper No(s)/Mail Date. _____                                      |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date <u>20031028, 20040123</u> .                                      | 6) <input type="checkbox"/> Other: _____                          |

## **DETAILED ACTION**

### ***Drawings***

The drawings are objected to under 37 CFR 1.83(a). The drawings must show every feature of the invention specified in the claims. Therefore, the “plurality of frictional members” claimed in claims 16, 18, and 20 must be shown or the feature(s) canceled from the claim(s). No new matter should be entered.

Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The figure or figure number of an amended drawing should not be labeled as “amended.” If a drawing figure is to be canceled, the appropriate figure must be removed from the replacement sheet, and where necessary, the remaining figures must be renumbered and appropriate changes made to the brief description of the several views of the drawings for consistency. Additional replacement sheets may be necessary to show the renumbering of the remaining figures. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either “Replacement Sheet” or “New Sheet” pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

### ***Claim Objections***

1. Claim 14 is objected to because of the following informalities: Lines 4 and 6 need to be changed to read, “ends are aligned at the same end” or “ends are orientated at the same end.” Two separate ends on separate strips cannot be “the same end.” Appropriate correction is required.

### ***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 13-21 are rejected under 35 U.S.C. 102(b) as being anticipated by Beaudry (WIPO International Publication No. WO 97/42918).

#### **Regarding Claim 13:**

In figures 19-25, Beaudry clearly teaches at least one strip of material with adhesive applied to one side of each of its two ends. This strip may pull or lift the skin and therefore could easily be used to separate one region of tissue from another. For description of the embodiments of the strip shown in figures 19-25, please refer to page 21, line 1 through page 22, line 22. In particular, see page 21, line 32 through page 22, line 2 for description of the adhesive layer present on pod 60 and anchor 120 (referring to figure 21).

Regarding Claim 14:

The language used in this claim is awkward and leaves some confusion. Therefore the claim language will be interpreted as laid out in the Claim Objections above. It is further noted that labeling various ends "first," "second," etc. may be an attempt to claim an orientation of the strips, which is not patentably substantive. For example, the fifth end could be the sixth end if the strip were flipped around. Using numeric labels without corresponding definition of those labels in the specification adds little meaning to the claims.

Referring to figure 23, please note that two strips, identical to the single strip in figure 21, are shown pulling tissue apart on either side of an incision. Likewise, two strips of the type illustrated in figure 19 could be used for the same purpose, because both ends have adhesive on one side. In that case, the first and second ends of Claim 13 would be the same and thus all ends of plural strips would be the same.

Regarding Claims 15, 17, and 19:

Please note that figures 19-25 all show strips with adhesive sections on both ends and non-adhesive elastic sections in the middle.

Regarding Claims 16, 18, and 20:

For the sake of clarity, a number of possible interpretations are addressed in the following paragraph. Referring now to figures 19, 24, and 25, please note that each of the strips shown has a plurality of frictional members on each end. The U-shaped incisions arranged in a ring around the center of the pods 60 are described on page 18, lines 16-24. These incisions increase friction with the skin being adhered to by allowing

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for greater stretching and bending of the skin without losing adhesion, thus enhancing the ability of the strips to maintain separation of tissue. They also increase friction with the skin of a finger, allowing a user to pull harder without losing his or her grip, thus enhancing the separation of tissue caused by the user pulling on the strip. The small nubs created on the concave side of the incisions are frictional members, as they have adhesive (and thus frictional) surfaces and their frictional force acts independently of the strip as a whole. Upon pulling on the end 60 of the strip, the nubs would naturally bend upward or downward and jut out, creating a circular pattern of small raised bumps.

Regarding Claim 20:

Please note that all of the strips described in Beaudry are inherently pre-formed. At least the strips shown in figures 19-25 are configured such that, when applied to a person's body, hold in separation some tissue from other tissue. They could be used without modification to hold the buttocks in separation to relieve discomfort caused by hemorrhoids.

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. A list of this prior art can be found in the enclosed Notice of References Cited. All documents listed therein are considered applicable to the instant claims as well as to the disclosure.

***Correspondence***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jordan J. Smith at 571-270-1915. The examiner can normally be reached from 9a-4p EST, Monday-Thursday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Gary Jackson, may be reached at 571-272-4697. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published application may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/J. S./  
5 December 2007

/Gary Jackson/  
Supervisory Patent Examiner  
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